

MILK CONTROL BUREAU/BOARD ARM

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32.24.101 ORGANIZATION OF BOARD

(4) The organization of the board of milk control is set out in chapter 1.
History: Sec. [81-23-103](#), [81-23-302](#) MCA; [IMP](#) , Sec. [2-4-201](#) MCA; Eff. 12/31/72; [TRANS](#) , from Commerce, 1996 MAR p. 456.

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| | 12/31/1972 | Current | History: Sec. 81-23-103 , 81-23-302 MCA; IMP , Sec. 2-4-201 MCA; Eff. 12/31/72; TRANS , from Commerce, 1996 MAR p. 456. |

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32.24.201 PROCEDURAL RULES

(4) The procedural rules of the board of milk control are set out in chapter 2.
History: Sec. [81-23-102](#), [81-23-302](#) MCA; [IMP](#) , Sec. [2-4-201](#) MCA; Eff. 12/31/72; [TRANS](#) , from Commerce, 1996 MAR p. 456.

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| | 12/31/1972 | Current | History: Sec. 81-23-102 , 81-23-302 MCA; IMP , Sec. 2-4-201 MCA; Eff. 12/31/72; TRANS , from Commerce, 1996 MAR p. 456. |

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32.24.301 PRICING RULES

(1) The provisions of this pricing rule and prices announced pursuant thereto are ordered in the exercise of authority delegated to the board of milk control by the provisions of 81-23-302, MCA.

(2) Any person, subject to this pricing rule or any price announcement issued hereunder shall be considered in violation thereof if he or it engages in such violation in any manner, directly or indirectly, or through an agent, employee, trust subsidiary, or affiliated company or corporation.

(3) It is the intent of the Montana board of milk control that if a part of this rule, announcement of any price issued hereunder is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this rule or any price announcement issued hereunder is invalid in one or more of its applications, that part remains in effect in all valid applications that are severable from the invalid applications.

(4) Nothing contained herein shall be construed as prohibiting the payment of higher prices to producers.

(5) The minimum class I price per hundredweight at 3.5% butterfat which shall be paid to producers by distributors in the state of Montana, shall be the monthly federal order price according to 7 CFR 1000.50(a) through (c) plus a Montana class Class I location differential of \$2.55.

(a) When milk does not test 3.5% butterfat, the price per CWT will be adjusted for each .1% the butterfat test moves up or down.

(b) The milk control bureau will use the federal order fat and skim prices to calculate the producer prices. Federal order fat and skim prices ~~shall be~~ are announced on the Friday previous to the 23rd of each month unless the 23rd falls on a Friday. ~~Montana's producer prices will be announced on or about the 5th of the subsequent month (depending upon weekends and holidays) and will be effective for the next following month.~~ Montana will follow the same schedule.

(6) Prices paid producers for class II milk will be the last spray process nonfat dry milk solids price per pound quote ~~for the~~ prior to the 20th of the month, Central States area, as most recently reported by the United States department of agriculture, plus a factor of \$.0125 per pound for freight, multiplied by 8.2 (which is the amount of solids not fat in skim milk), plus the last Chicago area grade AA butter price quote ~~for~~ prior to the 20th of the month as most recently reported by the United States department of agriculture, less an adjustment factor of \$.0895, multiplied by 4.2 (which is the amount of butter in pounds, which can be produced from 100 pounds of 3.5% milk), less a make allowance of 8.5%. In the case of milk containing more or less than 3.5% butterfat, the

differential to be employed in computing prices will be determined by multiplying the above-mentioned Chicago area butter price by .111 and the resulting answer from this calculation shall be rounded to nearest half cent (\$0.005) .

(7) Prices paid to producers for class III milk will be the last Chicago area grade AA butter price quote for prior to the 20th of the month as most recently reported by the United States department of agriculture, less an adjustment factor of \$.0895, less 10% and, in addition, when skim milk is utilized in this classification by any distributor, the last spray process nonfat milk solids price per pound quote for prior to the 20th of the month, the Central States area, as most recently reported by the United States department of agriculture, plus a factor of \$.0125 per pound for freight, multiplied by 8.2, less 17%.

(8) Producers who ship in excess of any beneficial use, and that milk is shipped to a different market and classified by statute and rule as class III, shall receive a price for that milk based on calculations in ARM ~~32.24.522~~ 32.24.513.

(9) The total cost to a plant for surplus milk that is shipped to a cheese or powder plant is determined by ARM 32.24.523.

(10) No price established by any formula set forth in this rule shall be charged if the same be contrary to any supervening federal or state law, rule or regulation.

Should any minimum prices published by this board under this rule exceed the limitations imposed by such laws, rules or regulations, such prices shall be reduced to the extent of such excess, even though such reduction may impair a uniform or complete application of the price fixing formula, or any of the same, set out in this rule. The prices, as so modified, shall be respected and enforced as the minimum prices established under this rule.

(11) Monthly price announcements for class I, II and III producer milk pricing will be computed by the ~~mMilk eControl bB~~Bureau in accordance with this pricing rule ~~and published by the 10th of~~ on the Friday previous to the 23rd of each month unless the 23rd falls on a Friday and published on or before the 26th of the month for each month. the following month. The minimum producer price will be uniform and identical throughout the state of Montana.

History: Sec. 81-23-302 MCA; IMP , Sec. 81-23-302 MCA; Eff. 12/31/72; AMD , Eff. 5/7/73; AMD , Eff. 10/1/73; AMD , Eff. 12/1/73; AMD , Eff. 4/5/74; AMD , Eff. 6/5/74; AMD , Eff. 4/4/75; AMD , Eff. 2/1/76; AMD , Eff. 5/6/76; AMD , Eff. 9/5/76; AMD , Eff. 7/5/77; AMD , 1979 MAR p. 1182, Eff. 11/1/79; AMD , 1981 MAR p. 1181, Eff. 10/16/81; AMD , 1982 MAR p. 1096, Eff. 5/28/82; AMD , 1982 MAR p. 1480, Eff. 7/30/82; AMD , 1982 MAR p. 1743, Eff. 10/1/82; AMD , 1983 MAR p. 649, Eff. 6/17/83; AMD , 1983 MAR p. 1459, Eff. 10/14/83; AMD , 1984 MAR p. 969, Eff. 6/29/84; AMD , 1986 MAR p. 1016, Eff. 6/13/86; AMD , 1986 MAR p. 1504, Eff. 9/12/86; AMD , 1987 MAR p. 881, Eff. 6/26/87; AMD , 1988 MAR p. 973, Eff. 5/27/88; AMD , 1988 MAR p. 1524, Eff. 7/15/88; AMD ,

1988 MAR p. 2298, Eff. 10/28/88; AMD , 1989 MAR p. 15, Eff. 1/13/89; AMD , 1989 MAR p. 2047, Eff. 4/1/90; AMD , 1990 MAR p. 821, Eff. 6/30/90; AMD , 1990 MAR p. 2177, Eff. 12/14/90; AMD , 1991 MAR p. 296, Eff. 3/15/91; AMD , 1991 MAR p. 513, Eff. 4/26/91; AMD , 1991 MAR p. 1550, Eff. 8/30/91; AMD , 1991 MAR p. 2600, Eff. 12/27/91; AMD , 1992 MAR p. 563, Eff. 3/27/92; AMD , 1992 MAR p. 2377, Eff. 10/30/92; AMD , 1993 MAR p. 2234, Eff. 10/1/93; AMD , 1993 MAR p. 3018, Eff. 12/24/93; AMD , 1995 MAR p. 2691, Eff. 12/8/95; TRANS , from Commerce, 1996 MAR p. 456; AMD , 1996 MAR p. 2181, Eff. 8/9/92; AMD , 1996 MAR p. 2428, Eff. 10/1/96; AMD , 1997 MAR p. 434, Eff. 2/25/97; EMERG, AMD , 1998 MAR p. 2760, Eff. 10/9/98; AMD , 2000 MAR p. 1753, Eff. 9/1/00; EMERG, AMD , 2000 MAR p. 3413, Eff. 12/8/00.

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| | 12/8/2000 | Current | History: Sec. <u>81-23-302</u> MCA; <u>IMP</u> , Sec. <u>81-23-302</u> MCA; Eff. 12/31/72; <u>AMD</u> , Eff. 5/7/73; <u>AMD</u> , Eff. 10/1/73; <u>AMD</u> , Eff. 12/1/73; <u>AMD</u> , Eff. 4/5/74; <u>AMD</u> , Eff. 6/5/74; <u>AMD</u> , Eff. 4/4/75; <u>AMD</u> , Eff. 2/1/76; <u>AMD</u> , Eff. 5/6/76; <u>AMD</u> , Eff. 9/5/76; <u>AMD</u> , Eff. 7/5/77; <u>AMD</u> , 1979 MAR p. 1182, Eff. 11/1/79; <u>AMD</u> , 1981 MAR p. 1181, Eff. 10/16/81; <u>AMD</u> , 1982 MAR p. 1096, Eff. 5/28/82; <u>AMD</u> , 1982 MAR p. 1480, Eff. 7/30/82; <u>AMD</u> , 1982 MAR p. 1743, Eff. 10/1/82; <u>AMD</u> , 1983 MAR p. 649, Eff. 6/17/83; <u>AMD</u> , 1983 MAR p. 1459, Eff. 10/14/83; <u>AMD</u> , 1984 MAR p. 969, Eff. 6/29/84; <u>AMD</u> , 1986 MAR p. 1016, Eff. 6/13/86; <u>AMD</u> , 1986 MAR p. 1504, Eff. 9/12/86; <u>AMD</u> , 1987 MAR p. 881, Eff. 6/26/87; <u>AMD</u> , 1988 MAR p. 973, Eff. 5/27/88; <u>AMD</u> , 1988 MAR p. 1524, Eff. 7/15/88; <u>AMD</u> , 1988 MAR p. 2298, Eff. 10/28/88; <u>AMD</u> , 1989 MAR p. 15, Eff. 1/13/89; <u>AMD</u> , 1989 MAR p. 2047, Eff. 4/1/90; <u>AMD</u> , 1990 MAR p. 821, Eff. 6/30/90; <u>AMD</u> , 1990 MAR p. 2177, Eff. 12/14/90; <u>AMD</u> , 1991 MAR p. 296, Eff. 3/15/91; <u>AMD</u> , 1991 MAR p. 513, Eff. 4/26/91; <u>AMD</u> , 1991 MAR p. 1550, Eff. 8/30/91; <u>AMD</u> , 1991 MAR p. 2600, Eff. 12/27/91; <u>AMD</u> , 1992 MAR p. 563, Eff. 3/27/92; <u>AMD</u> , 1992 MAR p. 2377, Eff. 10/30/92; <u>AMD</u> , 1993 MAR p. 2234, Eff. 10/1/93; <u>AMD</u> , 1993 MAR p. 3018, Eff. 12/24/93; <u>AMD</u> , 1995 MAR p. 2691, Eff. 12/8/95; <u>TRANS</u> , from Commerce, 1996 MAR p. 456; <u>AMD</u> , 1996 MAR p. 2181, Eff. 8/9/92; <u>AMD</u> , 1996 MAR p. 2428, Eff. 10/1/96; <u>AMD</u> , 1997 MAR p. 434, Eff. 2/25/97; EMERG, <u>AMD</u> , 1998 MAR p. 2760, Eff. 10/9/98; <u>AMD</u> , 2000 MAR p. 1753, Eff. 9/1/00; |

32.24.501 QUOTA DEFINITIONS

The following definitions apply to ARM [32.24.502](#), [32.24.503](#), [32.24.505](#) and [32.24.506](#) unless the context otherwise requires:

(1) "Administrator" is the Milk Control Bureau.

(2) "Eligible producer" is a producer who:

(a) is actively producing and selling milk to a Montana pool plant at the time the plan becomes effective;

(b) is approved by the pool plant and acquires quota pursuant to additional assignments to quota milk;

(c) acquires quota through transfer;

(d) was actively producing and selling milk to a plant located outside Montana on June 1, 1990, and who meets the requirements of ARM [32.24.502](#)(9) ; or

(e) was supplying milk for the Safeway bottling arrangement at the time this plan became effective.

(3) "Excess milk" means all of the milk received from a pool dairyman during the month which is in excess of his quota milk.

(4) "He or his" is a term used for explanatory purposes only and does not refer to the sex of any person.

(5) "Immediate family" includes spouses, ancestors, lineal descendants and their spouses, brothers or sisters. The term also includes a corporation, partnership, or other entity of which at least a one-half interest therein is owned by one or more spouses, ancestors, lineal descendants and their spouses, brothers, or sisters of the same family.

(6) "New eligible producer" is a producer who:

(a) produces milk within the state of Montana;

(b) has not ceased production of milk and/or disposed of any quota during the three-year period prior to re-entry into the market; and

(c) a contractual agreement with a Montana processor/handler and is licensed to produce milk.

(7) "Quota" is a daily figure expressed in pounds of milk as computed in accordance with ARM [32.24.502](#).

(8) "Quota milk" means that share of producer milk received during the month from a pool dairyman which falls within the limits of a figure computed by multiplying such pool dairyman's quota by the number of days in the month.

(9) "Quota transfer" is defined as a transfer of all or a minimum portion of an eligible producer's production history quota. Quota transfers must be a minimum of 100 pounds a day. If the eligible producer is going out-of-business and his daily balance amount is less than 100 pounds, then that amount may be transferred.

History: [81-23-302](#), MCA; [IMP](#), [81-23-302](#), MCA; [NEW](#), 1988 MAR p. 2300, Eff. 10/28/88; [AMD](#), 1990 MAR p. 931, Eff. 6/1/90; [AMD](#), 1990 MAR p. 2110, Eff. 11/30/90; [AMD](#), 1992 MAR p. 563, Eff. 3/27/92; [TRANS](#), from Commerce, 1996 MAR p. 456; [AMD](#), 1996 MAR p. 3215, Eff. 12/20/96; [AMD](#), 2005 MAR p. 2680, Eff. 12/23/05.

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| | 12/23/2005 | Current | History: 81-23-302 , MCA; IMP , 81-23-302 , MCA; NEW , 1988 MAR p. 2300, Eff. 10/28/88; AMD , 1990 MAR p. 931, Eff. 6/1/90; AMD , 1990 MAR p. 2110, Eff. 11/30/90; AMD , 1992 MAR p. 563, Eff. 3/27/92; TRANS , from Commerce, 1996 MAR p. 456; AMD , 1996 MAR p. 3215, Eff. 12/20/96; AMD , 2005 MAR p. 2680, Eff. 12/23/05. |

[32.24.503](#) NEW PRODUCERS-PERCENTAGE OF MILK SALES ASSIGNED TO QUOTA MILK

(1) A new eligible producer is entitled to receive the quota price for his milk sales to a pool plant for each month in accordance with the following schedule:

| <u>MONTHS</u> | <u>PERCENTAGE OF MILK SALES ASSIGNED TO QUOTA</u> |
|----------------------|---|
| April through August | 20% |

All other months 35%

(a) The new eligible producer cannot own any quota to be eligible for this assignment.

(b) This assignment is not an assignment of actual quota to such new eligible producer.

(c) This assignment of quota milk becomes a part of the total quota milk calculated under these rules.

(2) When the new eligible producer acquires quota by purchase or otherwise, or acquires quota pursuant to ARM [32.24.505](#), the percentage of milk sales assigned to quota price under this rule shall be decreased accordingly so that the total quota equals the applicable percentage in (1) .

(a) A producer who acquires quota by purchase or otherwise which exceeds the applicable percentage in (1) is not eligible to receive an assignment of quota pursuant to this rule.

(3) The percentage of milk sales assigned to quota price under this rule to any one new eligible producer may not exceed 35% of the current producer monthly average production (total quota production for the month, divided by the number of producers in production, times 35%) .

History: [81-23-302](#), MCA; [IMP](#) , [81-23-302](#), MCA; [NEW](#) , 1988 MAR p. 2300, Eff. 10/28/88; [AMD](#) , 1990 MAR p. 931, Eff. 6/1/90; [AMD](#) , 1991 MAR p. 1550, Eff. 8/30/91; [AMD](#) , 1991 MAR p. 2600, Eff. 12/27/91; [AMD](#) , 1992 MAR p. 563, Eff. 3/27/92; [TRANS](#) , from Commerce, 1996 MAR p. 456; [AMD](#) , 2000 MAR p. 78, Eff. 1/14/00.

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| | 1/14/2000 | Current | History: 81-23-302 , MCA; IMP , 81-23-302 , MCA; NEW , 1988 MAR p. 2300, Eff. 10/28/88; AMD , 1990 MAR p. 931, Eff. 6/1/90; AMD , 1991 MAR p. 1550, Eff. 8/30/91; AMD , 1991 MAR p. 2600, Eff. 12/27/91; AMD , 1992 MAR p. 563, Eff. 3/27/92; TRANS , from Commerce, 1996 MAR p. 456; AMD , 2000 MAR p. 78, Eff. 1/14/00. |

[32.24.504](#) TRANSFER OF QUOTA

(1) Quota is the property of each eligible producer. It may be transferred pursuant to the following terms and conditions:

(a) A quota transfer is defined as a transfer of the ownership of all or a portion of an eligible producer's quota; leasing of quota is prohibited. Quota transfers must be a minimum of 100 pounds a day. If the eligible producer is going out-of-business and his daily balance amount is less than 100 pounds, then that amount may be transferred.

(b) The Milk Control Bureau must be notified in writing by the proposed quota transferor at least 10 days prior to the first day of the month during which the transfer is contemplated. Such notice must include the name of the prospective transferee, the effective date of the proposed transfer, and the amount of quota to be transferred. The producer must also notify his pool plant of his transfer. The bureau will notify the producer committee of any proposed transfers.

(c) All quota transfers shall be effective only upon approval by the producer committee. The proposed quota transfer must be bona fide and not for the purpose of evading any provisions of this plan or applicable law.

(d) Except for an emergency approved by the producer committee, quota acquired through transfer may not be retransferred for six months.

(e) A quota transfer may be made only to an eligible producer, or one who has been accepted by a pool plant as a producer, not later than the last day of the month during which the transfer is contemplated.

History: [81-23-302](#), MCA; [IMP](#) , [81-23-302](#), MCA; [NEW](#) , 1988 MAR p. 2300, Eff. 10/28/88; [AMD](#) , 1989 MAR p. 973, Eff. 7/28/89; [AMD](#) , 1990 MAR p. 931, Eff. 6/1/90; [AMD](#) , 1990 MAR p. 2110, Eff. 11/30/90; [AMD](#) , 1991 MAR p. 1550, Eff. 8/30/91; [AMD](#) , 1991 MAR p. 2600, Eff. 12/27/91; [AMD](#) , 1992 MAR p. 563, Eff. 3/27/92; [TRANS](#) , from Commerce, 1996 MAR p. 456; [AMD](#) , 1996 MAR p. 3215, Eff. 12/20/96; [AMD](#) , 1997 MAR p. 1662, Eff. 9/23/97; [AMD](#) , 2000 MAR p. 78, Eff. 1/14/00; [AMD](#) , 2005 MAR p. 2680, Eff 12/23/05.

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| | 12/23/2005 | Current | History: 81-23-302 , MCA; IMP , 81-23-302 , MCA; NEW , 1988 MAR p. 2300, Eff. 10/28/88; AMD , 1989 MAR p. 973, Eff. 7/28/89; AMD , 1990 MAR p. 931, Eff. 6/1/90; AMD , 1990 MAR p. 2110, Eff. 11/30/90; AMD , 1991 MAR p. 1550, Eff. 8/30/91; AMD , 1991 MAR p. 2600, Eff. 12/27/91; AMD , 1992 MAR p. 563, Eff. |

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| | | | 3/27/92; <u>TRANS</u> , from Commerce, 1996 MAR p. 456; <u>AMD</u> , 1996 MAR p. 3215, Eff. 12/20/96; <u>AMD</u> , 1997 MAR p. 1662, Eff. 9/23/97; <u>AMD</u> , 2000 MAR p. 78, Eff. 1/14/00; <u>AMD</u> , 2005 MAR p. 2680, Eff 12/23/05. |
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32.24.505 REASSIGNMENT OF QUOTA FROM THE UNASSIGNED QUOTA POOL AND READJUSTMENT OF QUOTA INTO THE STATEWIDE QUOTA SYSTEM

(1) The quota accumulated in the unassigned quota pool will be re-assigned pro-rata to all eligible producers when the unassigned quota pool is equal to or greater than 500 pounds.

(a) For application of (1) the administrator shall determine the total pounds of quota that has been forfeited and accumulated through March 31 either by initial determination (meaning when the quota system began) , or loss of quota.

(b) The resulting pounds in (1) (a) shall be prorated to all eligible producers on the basis of their average daily marketing of milk to all pool plants during the preceding months of September through December and assigned to them as quota effective on May 1st.

(2) Readjustment of quota into the statewide quota system will occur if the Montana market needs exceed the current established total quota.

(3) Market needs are not met when the following conditions exist:

(a) when there is less than 16.5% in class III quota milk; and

(b) when production of class I and class II quota milk has increased from two years prior to the preceding year (when a negative figure results, there will be no readjustment) .

(4) When the statewide quota system needs additional quota added to meet market needs, the administrator shall calculate on or before the first day of April each year the additional quota to be assigned to each eligible producer in accordance with the following computations:

(a) For application of (3) (a) , using the preceding calendar year (January 1 through December 31) , the total class III quota milk is divided by the total quota pounds to determine the percentage of class III quota milk utilized.

(b) For application of (3) (b) , using the preceding calendar year (January 1 through December 31) , compute the total pounds of class I and class II quota milk from all pool plants and subtract the results obtained from (4) (a) .

(c) Take the positive figure resulting from the computation in (4) (b) and divide it by the total days in the year to determine how many pounds of quota will be issued into the statewide quota system.

(d) The resulting pounds in (4) (c) shall be prorated to all eligible producers on the basis of their average daily marketing of milk to all pool plants during the preceding months of September through December and assigned to them as quota effective on May 1st.

(5) Any affected party, not satisfied with the outcome of this rule, may petition the Board of Milk Control for a hearing.

History: [81-23-302](#), MCA; [IMP](#), [81-23-302](#), MCA; [NEW](#), 1988 MAR p. 2300, Eff. 10/28/88; [AMD](#), 1990 MAR p. 502, Eff. 3/16/90; [AMD](#), 1990 MAR p. 931, Eff. 6/1/90; [AMD](#), 1990 MAR p. 2110, Eff. 11/30/90; [AMD](#), 1991 MAR p. 49, Eff. 1/18/91; [AMD](#), 1991 MAR p. 2600, Eff. 12/27/91; [AMD](#), 1993 MAR p. 3018, Eff. 12/24/93; [AMD](#), 1995 MAR p. 470, Eff. 3/31/95; [TRANS](#), from Commerce, 1996 MAR p. 456; [AMD](#), 1997 MAR p. 314, Eff. 12/20/96; [AMD](#), 1997 MAR p. 1662, Eff. 9/23/97; [AMD](#), 2000 MAR p. 78, Eff. 1/14/00; [AMD](#), 2005 MAR p. 2680, Eff. 12/23/05.

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| | 12/23/2005 | Current | History: 81-23-302 , MCA; IMP , 81-23-302 , MCA; NEW , 1988 MAR p. 2300, Eff. 10/28/88; AMD , 1990 MAR p. 502, Eff. 3/16/90; AMD , 1990 MAR p. 931, Eff. 6/1/90; AMD , 1990 MAR p. 2110, Eff. 11/30/90; AMD , 1991 MAR p. 49, Eff. 1/18/91; AMD , 1991 MAR p. 2600, Eff. 12/27/91; AMD , 1993 MAR p. 3018, Eff. 12/24/93; AMD , 1995 MAR p. 470, Eff. 3/31/95; TRANS , from Commerce, 1996 MAR p. 456; AMD , 1997 MAR p. 314, Eff. 12/20/96; AMD , 1997 MAR p. 1662, Eff. 9/23/97; AMD , 2000 MAR p. 78, Eff. 1/14/00; AMD , 2005 MAR p. 2680, Eff. 12/23/05. |

32.24.506 PRODUCER COMMITTEE

(1) The producer committee has authority to approve all transfers of quota and to review all requests for hardship or equitable relief.

(2) The producer committee shall consist of one eligible producer for each 10% of the total August pool raw milk represented by each pool plant with a minimum of at least one committee representative per pool plant. Calculation is done by using the total August pool of each pool plant's milk receipts, divided by the total August pool milk each pool plant's receipts, rounded to the nearest 10%, and divided by ~~4~~ .01.

(3) The administrator or his designated representative will attend, participate, and maintain a record of each producer committee meeting. The administrator or his designated representative will not have a vote in any decision of the producer committee.

(4) The producer committee will invite each pool plant manager or his designated representative to attend its meetings. No pool plant manager or designated representative will have a vote in any decision of the producer committee.

(5) Producer committee meetings will not be held without at least ten days written notice given to each committee member, the administrator, and each plant manager or their designated representatives.

(6) The producer committee members will serve terms of two years each and have the option of serving additional two year terms, ~~but not more than two consecutive terms~~. Vacancies on the committee will be filled in the same manner as the original appointment. ~~Successors will complete the term of the original committee member~~. Each committee member will be selected by all eligible pool producer representatives of each pooled plant.

(7) Seven voting members of the producer committee shall constitute a quorum for the transaction of business. A majority vote shall be sufficient to make an official decision.

History: 81-23-302, MCA; IMP, 81-23-302, MCA; NEW, 1988 MAR p. 2300, Eff. 10/28/88; AMD, 1989 MAR p. 973, Eff. 7/28/89; AMD, 1990 MAR p. 931, Eff. 6/1/90; TRANS, from Commerce, 1996 MAR p. 456; AMD, 1996 MAR p. 3215, Eff. 12/20/96; AMD, 1997 MAR p. 1662, Eff. 9/23/97.

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| | 9/23/1997 | Current | History: <u>81-23-302</u> , MCA; <u>IMP</u> , <u>81-23-302</u> , MCA; <u>NEW</u> , 1988 MAR p. 2300, Eff. 10/28/88; <u>AMD</u> , 1989 MAR p. 973, Eff. 7/28/89; <u>AMD</u> , 1990 MAR p. 931, Eff. 6/1/90; <u>TRANS</u> , from Commerce, 1996 MAR p. 456; <u>AMD</u> , 1996 MAR p. 3215, Eff. 12/20/96; <u>AMD</u> , 1997 MAR p. 1662, Eff. 9/23/97. |
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32.24.507 REQUEST FOR REVIEW, HARDSHIP, AND APPEALS

(1) After quotas are first issued under this plan and after quotas are issued under each succeeding quota readjustment, any eligible producer may request review from the producer committee on the following grounds:

(a) he was not issued a quota;

(b) his production history quota is not appropriate because of unusual conditions during the base earning period, such as loss of buildings, herds, or other facilities as the result of fire, floods, storms, official quarantine, disease, pesticide residue or condemnation of milk;

(c) he lost or might lose quota because justifiably or excusably off market for 90 or more consecutive days;

(d) he lost or might lose quota because of under delivery; or

(e) inability to transfer quota.

(2) Hardship is defined as an act of nature such as fire, flood, or detrimental health of an eligible producer.

(a) Terminally ill or progressive degenerative illness or permanent disability may be used as grounds for hardship consideration.

(b) Loss of milk production due to inability to obtain adequate labor to maintain milk production will not be considered a ground for hardship adjustment.

(3) A producer may make a request for review, which shall be filed with the Milk Control Bureau (who will then forward the request to the producer committee and the Board of Milk Control) not later than 45 days after notice of the quota issued, or not later than 45 days after the occurrence of the alleged hardship. The request shall set forth:

(a) the conditions that caused the alleged hardship or inequity;

(b) the extent of relief or adjustment requested;

(c) the basis upon which the amount of relief or adjustment requested should be computed; and

(d) the reasons why relief or adjustment should be granted.

(4) With respect for a producer's request for review of production history, quota, forfeiture of quota, or other related problems, the producer committee may grant or adjust production history quota on average daily producer milk deliveries for prior years where it appears appropriate, delay forfeiture of quota, restore forfeited quota or reduce average daily producer milk deliveries where appropriate.

(5) Producer committee decisions shall be final subject to appeal to the Board of Milk Control.

(a) A producer shall file a notice of appeal within 15 days after written notification of the decision of the producer committee.

(b) In the event an action by the producer committee is in violation of the plan, the administrator shall bring it to the attention of the aggrieved party.

(6) The Board of Milk Control shall hear an appeal at their next scheduled regular board meeting or within 90 days of its filing at the bureau's office.

(7) When an aggrieved person files an appeal to the Board of Milk Control from a decision of the producer committee, the appeal will be heard as follows:

(a) The aggrieved party will be given the opportunity to make an oral presentation and submit written justification in support of reversal or modification of the producer committee's decision.

(b) Members of the producer committee will be given the opportunity to make an oral presentation and submit written material in opposition to reversal or modification of the producer committee's decision.

(c) The decision of the Board of Milk Control will be based on the record of the producer committee hearing as supplemented by oral argument and written submissions to the board. However, the hearing before the board will not be a trial de novo. New material that could not reasonably be submitted to the producer committee will be accepted if it relates to the grounds set forth in (8) hereof.

(8) In ruling on the appeal from the producer committee's decision the Board of Milk Control will not overrule or modify the decision of the producer committee unless:

(a) there was collusion affecting the producer committee's decision;

(b) the Board of Milk Control determines that actual bias or prejudice on the part of one or more producer committee members affected the decision;

(c) the producer committee's decision was the result of an incorrect interpretation of a statute or rule applicable to the decision; or

(d) the producer committee's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

(9) On review of a producer committee's decision, the Board of Milk Control shall not substitute its judgment (second guess) for that of the producer committee as to the weight of the evidence on question of fact.

(10) An appeal that the Board of Milk Control overturns (the producer committee's decision) is final and does not have to be approved by the producer committee. The Board of Milk Control will instruct the administrator how to handle the transaction.

(11) The administrator shall maintain records of all requests of the producer committee and the disposition thereof. Such files shall be open for inspection by any interested persons during the regular office hours of the Montana Milk Control Bureau.

History: [81-23-302](#), MCA; [IMP](#) , [81-23-302](#), MCA; [NEW](#) , 1997 MAR p. 1662, Eff. 9/23/97; [AMD](#) , 2005 MAR p. 2680, Eff. 12/23/05.

Effective rule versions existed in ARM on or after March 31, 2007

| MAR Notices | Effective From | Effective To | History Notes |
|-------------|----------------|--------------|---|
| | 12/23/2005 | Current | History: 81-23-302 , MCA; IMP , 81-23-302 , MCA; NEW , 1997 MAR p. 1662, Eff. 9/23/97; AMD , 2005 MAR p. 2680, Eff. 12/23/05. |

[Printer Friendly Version](#)

32.24.511 POOLING PLAN DEFINITIONS

The following definitions apply in subchapter 5 unless the context otherwise requires:

(1) "Excess milk over quota" means milk received **from** ~~for~~ a producer that is over his established quota. This milk is priced as excess milk.

(2) "Nonpool milk" means any milk received or marketed by a pool handler, other than pool milk.

(3) "Nonpool plant" means any milk processing, packaging, or receiving plant which is not a pool plant.

(4) "Pool area" includes all territory within the borders of the state of Montana.

(5) "Pool dairyman" means any dairy farmer, except a producer handler who produces milk, within the state of Montana, which is marketed to or through a pool handler.

(6) "Pool handler" means any person who operates one or more pool plants, or an association of milk producers which is incorporated as a cooperative association and which has been approved by the Milk Control Bureau for the marketing of milk produced by pool dairymen.

(7) "Pool milk" means all of the milk produced by pool dairymen, under licenses issued by the Milk Control Bureau, which is received at pool plants or marketed to a nonpool plant by a pool handler.

(8) "Pool plant" means any milk plant located within the pool area which is approved by the Montana Department of Livestock and licensed by the Milk Control Bureau for the receipt and disposition of grade 'A' milk at which grade 'A' milk is received and/or processed during the month.

(9) "Pool settlement reserve" means a reserve fund of money belonging to pool dairymen which the administrator shall retain on a revolving basis for the purpose of receiving monies from or in paying monies to pool handlers, as provided in [81-23-302](#) (14) , MCA.

(10) "Producer handler" means any person who operates a dairy farm, and produces milk on such farm, which milk is received and processed and/or packaged in a milk plant operated by such person, and disposed of to retail or wholesale outlets in the pool area during the month, provided that the producer handler receives no dairy products in fluid form during the month from another person, except for milk and/or fluid milk products of 2500 pounds, or 5% of the producer handler's class I milk dispositions, whichever is less.

(11) "Quota price" means the weighted average price for all quota milk testing 3.5% butterfat as computed for the month by the pool administrator in accordance with the procedures specified in ARM [32.24.513](#).

(12) "Surplus milk in quota" means the milk utilized at all pool plants was less than the amount of the total combined quota of all pool producers. This milk is priced as quota milk.

(13) "Utilization value" means a sum of money computed for each pool handler with respect to the butterfat and skim milk contained in pool milk received from pool dairymen and disposed of or utilized during the month, such sum to be computed, using the class prices therefore and the classification thereof, as established pursuant to ARM [32.23.102](#), and subject to any interplant hauling, reclassification, or other charges or credits which are established under rules of the Milk Control Bureau.

History: [81-23-302](#), MCA; [IMP](#), [81-23-302](#), MCA; [NEW](#), 1990 MAR p. 931, Eff. 6/1/90; [AMD](#), 1995 MAR p. 470, Eff. 3/31/95; [TRANS](#), from Commerce, 1996 MAR p. 456; [AMD](#), 2000 MAR p. 78, Eff. 1/14/00.

Effective rule versions existed in ARM on or after March 31, 2007

| MAR Notices | Effective From | Effective To | History Notes |
|-------------|----------------|--------------|---|
| | 1/14/2000 | Current | History: 81-23-302 , MCA; IMP , 81-23-302 , MCA; NEW , 1990 MAR p. 931, Eff. 6/1/90; AMD , 1995 MAR p. 470, Eff. 3/31/95; TRANS , from Commerce, 1996 MAR p. 456; AMD , 2000 MAR p. 78, Eff. 1/14/00. |

[32.24.512](#) REPORTS AND RECORDS

(1) On or before the eighth business day after the end of each month, each pool handler shall report for such months, to the administrator with respect to the pool plant(s) operated by such handler, and/or for all pool milk marketed to nonpool plants, on forms provided by the administrator, the following:

(a) the quantities and butterfat content of milk received or marketed from the farms of pool dairymen during the month, the location of the pool plant where the milk was first received, and the pounds thereof which qualified as quota milk;

(b) the quantities and butterfat contents of milk and fluid milk products received from other pool plants during the month together with the classification of such products as agreed upon with the operator of the pool plant from which received, provided that if a classification is not agreed upon, such milk shall be assigned to class III, to the extent such use is available, and thereafter in sequence to class II and class I;

(c) the quantities and butterfat content of any other receipts of nonpool milk, the pounds and butterfat and skim milk content of all other dairy products received during the month (except nonfluid milk products disposed of in the form in which received without further processing) ;

(d) the quantities and butterfat and skim milk content of all inventories of milk and other dairy products on hand in the pool plant at the beginning of the month;

(e) the quantities and butterfat and skim milk content of all milk and milk products disposed of from the pool plant during the month, and in the case of any such products transferred in fluid form to the pool plants of other pool handlers, the classification of such products as agreed upon with the operator of the other pool plants, provided that if no agreement is reached, a classification shall be assigned in accordance with (1) (b) hereof;

(f) the quantities and butterfat and skim milk content of all milk and other dairy products utilized in the processing or manufacturing of dairy products in the pool plant during the month, together with the same information for the products produced;

(g) the disposition made of any pool milk marketed by the pool handler during the month which was not received at his pool plant(s) , and the utilization made of such milk;

(h) the quantities together with the butterfat and skim milk content of inventories of all milk and dairy products on hand in the pool plant at the end of the month.

(2) Each producer handler shall report to the administrator complete information with respect to his receipt or purchase of milk and dairy products during the month, and the disposition of use thereof. Such report shall be made at the times and in such manner as may be required by the administrator, and the producer handler shall maintain records of his operations as required under the rules of the Milk Control Bureau, and present them for audit by the pool administrator when so requested by him.

(3) Each pool handler shall maintain complete records and accounts of all pool milk received or marketed, and all other milk and dairy products received at each of his pool plants, and the use or disposition of such milk and dairy products for each month together with payments received or made therefore, and shall retain records of the foregoing transactions and other records as required under the rules of the Milk Control Bureau and present them for audit by the administrator as required by him.

History: [81-23-302](#), MCA; [IMP](#) , [81-23-302](#), MCA; [NEW](#) , 1990 MAR p. 931, Eff. 6/1/90; [TRANS](#) , from Commerce, 1996 MAR p. 456.

Effective rule versions existed in ARM on or after March 31, 2007

| MAR Notices | Effective From | Effective To | History Notes |
|-------------|----------------|--------------|--|
| | 6/1/1990 | Current | History: 81-23-302 , MCA; IMP , 81-23-302 , MCA; NEW , 1990 MAR p. 931, Eff. 6/1/90; TRANS , from Commerce, 1996 MAR p. 456. |

[32.24.513](#) COMPUTATION OF PRICE FOR QUOTA MILK AND EXCESS MILK

(1) On or before the 12th day of each month, or the first business day thereafter, the administrator shall compute a quota price and an excess price for the preceding month as follows:

(a) Combine the figures for butterfat and skim usage by class of pool producers' milk for all pool handlers to determine a total dollar amount for butterfat and skim respectively.

(b) Add or deduct any increased value received or transportation/handling charges accrued to surplus/excess milk (per ARM [32.24.516](#)) to the appropriate butterfat and/or skim totals in (1) (a) .

(c) To the skim total in (1) (b) add one-half the settlement reserve and deduct an amount equal to 12 cents per hundredweight of quota milk.

(d) Divide the skim dollar amount derived in (1) (c) by the total skim pounds to determine a poolwide value per skim pound. Similarly, divide the butterfat dollar amount derived in (1) (b) by the total butterfat pounds to determine a poolwide value per butterfat pound.

(e) The quota price at 3.5% test will be \$1.50 higher than excess. The \$1.50 differential will be split proportionately between butterfat and skim.

(f) To calculate the quota price, divide the excess pounds by total producer pounds. Multiply the resultant percentage by the differential in (1) (e) and add the amount so derived proportionately to the butterfat and skim components of the poolwide prices in (1) (d) . This skim price per pound in (1) (d) multiplied by 96.5 added to the butterfat price per pound in (1) (d) multiplied by 3.5 will result in the quota price at 3.5% for the month.

(g) To calculate the excess price, subtract the butterfat and skim proportions of the differential in (1) (f) from the quota components in (1) (g) . The skim figure

so derived multiplied by 96.5 added to the butterfat figure so derived multiplied by 3.5 will result in the excess price at 3.5% for the month.

(2) The administrator shall announce to all interested persons on or before the 13th day of each month, or the first business day thereafter, the quota and excess prices for milk testing 3.5% butterfat as computed pursuant to (1) (f) and (1) (g) , and a butterfat price for quota and excess milk as provided for producer milk under ARM [32.24.301](#) to adjust for differences in butterfat content of the milk.

History: [81-23-302](#), MCA; [IMP](#) , [81-23-302](#), MCA; [NEW](#) , 1990 MAR p. 931, Eff. 6/1/90; [AMD](#) , 1991 MAR p. 1550, Eff. 8/30/91; [AMD](#) , 1995 MAR p. 470, Eff. 3/31/95; [TRANS](#) , from Commerce, 1996 MAR p. 456; [AMD](#) , 2006 MAR p. 330, Eff. 2/10/06.

Effective rule versions existed in ARM on or after March 31, 2007

| MAR Notices | Effective From | Effective To | History Notes |
|-------------|----------------|--------------|--|
| | 2/10/2006 | Current | History: 81-23-302 , MCA; IMP , 81-23-302 , MCA; NEW , 1990 MAR p. 931, Eff. 6/1/90; AMD , 1991 MAR p. 1550, Eff. 8/30/91; AMD , 1995 MAR p. 470, Eff. 3/31/95; TRANS , from Commerce, 1996 MAR p. 456; AMD , 2006 MAR p. 330, Eff. 2/10/06. |

[32.24.514](#) PROCEDURES FOR POOLING OF RETURNS FROM POOL MILK

(1) As soon as possible after completing the computation of the quota and excess prices the administrator shall:

(a) compute the net pool obligation of each pool handler by subtracting from his utilization value the amount of money due pool dairymen from such pool handler, based on the quota and excess prices for milk as adjusted for the butterfat test thereof, and other charges as required or permitted under the rules of the Milk Control Bureau;

(b) on or before the 13th day of the month provide written notice to each pool handler of the price and butterfat differential for quota and excess milk for the preceding month, the pool handler's utilization value, and the minimum amount owed pool dairymen for pool milk received or marketed;

(c) on or before the 13th day of the month, notify each pool handler of the amount if any by which his utilization value for the preceding month exceeds the amount due pool dairymen with respect to the pool handler's pool milk, based on the appropriate quota and excess prices. The amount of such difference must then be paid by such pool handler to the administrator on or before the 15th day of the month, or the first business day thereafter, for deposit into the pool settlement reserve. Any amount due that is not received by the administrator by the 25th of the month will have a late charge or an interest charge of 1.5% automatically attached each month the payment is not made. For purposes of calculating the interest, the 1.5% charge will be added to the unpaid balance each month.

(d) pay to each pool handler on or before the 14th day of the month or as soon as funds are available, any sum by which the pool handler's utilization value for the preceding month is less than the amount due those from whom he received pool milk during the preceding month, based on the quota and excess prices as adjusted for the butterfat content of such pool milk.

History: [81-23-302](#), MCA; [IMP](#), [81-23-302](#), MCA; [NEW](#), 1990 MAR p. 931, Eff. 6/1/90; [AMD](#), 1990 MAR p. 2110, Eff. 11/30/90; [AMD](#), 1993 MAR p. 3018, Eff. 12/24/93; [TRANS](#), from Commerce, 1996 MAR p. 456.

Effective rule versions existed in ARM on or after March 31, 2007

| MAR Notices | Effective From | Effective To | History Notes |
|-------------|----------------|--------------|--|
| | 12/24/1993 | Current | History: 81-23-302 , MCA; IMP , 81-23-302 , MCA; NEW , 1990 MAR p. 931, Eff. 6/1/90; AMD , 1990 MAR p. 2110, Eff. 11/30/90; AMD , 1993 MAR p. 3018, Eff. 12/24/93; TRANS , from Commerce, 1996 MAR p. 456. |

32.24.515 PAYMENTS TO POOL DAIRYMEN AND ADJUSTMENT OF ACCOUNTS

(1) Each pool dairyman must be paid twice each month by the appropriate pool handler(s) for the pool milk received or marketed from such pool dairyman during the month as follows:

(a) A partial or advance payment approximately equal to the value of the pool milk marketed during the first two weeks of the month, less one-half of the approximate monthly deductions herein sanctioned, must be paid to the pool dairyman, or his authorized agent, not later than 30 days after the first day of each month. Such payment need not be accompanied by an itemized statement.

(b) Payments must be made to each pool dairyman, or his authorized agent, not later than 15 days after the end of the month for the pool milk of such pool dairyman for such month. This payment must be at the appropriate quota and/or

excess price as adjusted for butterfat content (the rate of such adjustment to be based on the weighted average value of butterfat in the different classes of utilization) , and subject to deductions for partial payments under (1) (a) hereof, administrative assessments, hauling and other deductions authorized under ARM [32.23.102](#)(3) , and it must be accompanied by a statement to each pool dairyman setting forth the information required in ARM [32.23.102](#)(10) .

(c) As soon as possible after each monthly computation of quota and excess prices is completed, the administrator must audit the books and records of each pool handler, and determine whether there have been proper accounting for and payment of the amount owed the administrator and/or individual pool dairyman, or cooperative associations from whom the pool handler has received pool milk. If errors are found in the accounting or payments of the pool handler, the administrator must notify him thereof promptly, and if there were underpayments by the pool handler, the additional amounts due must be paid within 10 days after notice thereof is given. Money paid to adjust for underpayments to the administrator must be deposited into the pool settlement reserve. In the case of overpayments by a pool handler to the administrator, the administrator must promptly remit the amount due to such pool handler.

History: [81-23-302](#), MCA; [IMP](#) , [81-23-302](#), MCA; [NEW](#) , 1990 MAR p. 931, Eff. 6/1/90; [AMD](#) , 1995 MAR p. 470, Eff. 3/31/95; [TRANS](#) , from Commerce, 1996 MAR p. 456.

Effective rule versions existed in ARM on or after March 31, 2007

| MAR Notices | Effective From | Effective To | History Notes |
|-------------|----------------|--------------|---|
| | 3/31/1995 | Current | History: 81-23-302 , MCA; IMP , 81-23-302 , MCA; NEW , 1990 MAR p. 931, Eff. 6/1/90; AMD , 1995 MAR p. 470, Eff. 3/31/95; TRANS , from Commerce, 1996 MAR p. 456. |

32.24.516 PROCEEDS AND LOSSES FOR SURPLUS MILK IN QUOTA AND EXCESS MILK OVER QUOTA

(1) Any freight costs and loss on the movement and sale of surplus milk in quota will be charged back to the statewide quota pool.

(a) If there is a loss, then all producers in the statewide quota system will share in the loss; or

(b) If there are any proceeds from surplus milk in quota, those proceeds will be shared with all producers in the statewide quota system.

(2) The proceeds for the sale of excess milk over quota, less transportation and administrative costs, will be shared with those producers who ship in excess of their quota.

History: [81-23-302](#), MCA; IMP , [81-23-302](#), MCA; NEW , 2000 MAR p. 78, Eff. 1/14/00.

Effective rule versions existed in ARM on or after March 31, 2007

| MAR Notices | Effective From | Effective To | History Notes |
|-------------|----------------|--------------|--|
| | 1/14/2000 | Current | History: 81-23-302 , MCA; <u>IMP</u> , 81-23-302 , MCA; <u>NEW</u> , 2000 MAR p. 78, Eff. 1/14/00. |

[32.24.520](#) DEFINITIONS

The following definitions apply to ARM [32.24.523](#), [32.24.524](#), and [32.24.525](#) unless the context otherwise requires:

- (1) "Producer committee" is that committee defined in ARM [32.24.506](#).
- (2) "Pool plant" has the same meaning as in ARM [32.24.511](#).
- (3) "Pool handler" has the same meaning as in ARM [32.24.511](#).
- (4) "Pool milk" has the same meaning as in ARM [32.24.511](#).
- (5) "Pool settlement reserve" has the same meaning as in ARM [32.24.511](#).
- (6) "Quota price" has the same meaning as in ARM [32.24.511](#).
- (7) "Pool dairyman" has the same meaning as in ARM [32.24.511](#).

(8) "Surplus milk" is all raw milk under contract to a pool handler that is over and above the pool handler's class I and II needs but excludes cream and fat products which are derived from processing.

ARM 32.23.101 Definitions:

(h) "Surplus" means that amount of milk produced that exceeds the class I and II needs of the market.

Should these two definitions be the same?

History: [81-23-104](#), MCA; [IMP](#) , [81-23-103](#), MCA; [NEW](#) , 1996 MAR p. 2428, Eff. 10/1/96; [AMD](#) , 2000 MAR p. 3413, Eff. 12/8/00.

Effective rule versions existed in ARM on or after March 31, 2007

| MAR Notices | Effective From | Effective To | History Notes |
|-------------|----------------|--------------|--|
| | 12/8/2000 | Current | History: 81-23-104 , MCA; IMP , 81-23-103 , MCA; NEW , 1996 MAR p. 2428, Eff. 10/1/96; AMD , 2000 MAR p. 3413, Eff. 12/8/00. |

Latest version of the adopted rule presented in Administrative Rules of Montana (ARM):

32.24.521 REQUIRED UTILIZATION OF SURPLUS MILK (REPEALED)

[\(See the Transfer and Repeal Table\)](#)

History: [81-23-104](#), MCA; [IMP](#) , [81-23-103](#), MCA; [NEW](#) , 1996 MAR p. 2428, Eff. 10/1/96; [REP](#) , 2000 MAR p. 1753, Eff. 9/1/00.

Effective rule versions existed in ARM on or after March 31, 2007

| MAR Notices | Effective From | Effective To | History Notes |
|-------------|----------------|--------------|---|
| | 9/1/2000 | Current | History: 81-23-104 , MCA; IMP , 81-23-103 , MCA; NEW , 1996 MAR p. 2428, Eff. 10/1/96; REP , 2000 MAR p. 1753, Eff. 9/1/00. |

32.24.522 PROCEDURES, PURCHASE PRICE AND TERMS (REPEALED)

[\(See the Transfer and Repeal Table\)](#)

History: [81-23-104](#), MCA; [IMP](#) , [81-23-103](#), MCA; [NEW](#) , 1996 MAR p. 2428, Eff. 10/1/96; [REP](#) , MAR p. 1753, Eff. 9/1/00.

Effective rule versions existed in ARM on or after March 31, 2007

| MAR Notices | Effective From | Effective To | History Notes |
|-------------|----------------|--------------|--|
| | 9/1/2000 | Current | History: 81-23-104 , MCA; IMP , 81-23-103 , MCA; NEW , 1996 MAR p. 2428, Eff. 10/1/96; |

32.24.523 **MARKETING OF SURPLUS MILK TO NONPOOL HANDLERS**

(1) All surplus milk not directed to other pool handlers for use in Montana class I and II sales as required by this subchapter shall be marketed and sold in an economically advantageous manner and any gain or loss shall be exclusively shared by all Montana pool dairymen.

(a) The surplus milk purchased by Montana pool handlers for out-of-state use, but processed in Montana, shall be treated the same as sales to nonpool handlers such as to a cheese plant.

(2) The pool dairymen, acting through the producer committee, shall retain the right to control and direct the marketing of the surplus milk.

(3) Unless directed otherwise by the producer committee or until a pool handler declines to perform the service, all surplus milk will be marketed and sold directly by the pool handlers in possession of that surplus milk under such direction, supervision, and approval as the producer committee in its discretion may elect to employ.

(a) In the event the producer committee markets the milk directly, it shall have the authority to hire such agents and incur such other expenses as necessary to fulfill that function.

(4) All proceeds received from the sale of surplus milk shall be deposited in the pool settlement reserve less the following deductions which shall be retained by the pool handler:

(a) the amount for which the pool handler is obligated to account to the pool settlement reserve based on the Montana class III minimum producer price;

(b) an administrative fee not exceeding ~~\$.12~~ **\$.02**/CWT; and

(c) reasonable transportation expenses actually incurred by the pool handler. No farm pickup charges will be included as deductions. Farm pickup charges are the usual charges to the producer for transporting milk to the pool plant.

(5) The amounts paid into the pool settlement reserve account shall include all valuable consideration paid in any form and shall be accompanied by such reporting forms, invoices, contracts, and other documentation as may be requested by the Milk Control Bureau.

History: [81-23-104](#), MCA; [IMP](#) , [81-23-103](#), MCA; [NEW](#) , 1996 MAR p. 2428, Eff. 10/1/96; [AMD](#) , 2000 MAR p. 1753, Eff. 9/1/00; [AMD](#) , 2000 MAR p. 3413, Eff. 12/8/00.

Effective rule versions existed in ARM on or after March 31, 2007

| MAR Notices | Effective From | Effective To | History Notes |
|-------------|----------------|--------------|---|
| | 12/8/2000 | Current | History: 81-23-104 , MCA; IMP , 81-23-103 , MCA; NEW , 1996 MAR p. 2428, Eff. 10/1/96; AMD , 2000 MAR p. 1753, Eff. 9/1/00; AMD , 2000 MAR p. 3413, Eff. 12/8/00. |

32.24.524 REQUIRED UTILIZATION OF SURPLUS MILK

(1) Any pool handlers with surplus milk shall first make that milk available to other pool handlers under the terms and conditions provided in subchapter 5 before disposing of that surplus milk to any nonpool handler.

(2) Any pool handlers without raw milk sufficient to satisfy their Montana class I and II market needs shall first utilize surplus milk available from other pool handlers under the terms and conditions provided in subchapter 5 before purchasing milk from other sources.

History: [81-23-104](#), MCA; [IMP](#) , [81-23-103](#), MCA; [NEW](#) , 2000 MAR p. 3413, Eff. 12/8/00.

Effective rule versions existed in ARM on or after March 31, 2007

| MAR Notices | Effective From | Effective To | History Notes |
|-------------|----------------|--------------|--|
| | 12/8/2000 | Current | History: 81-23-104 , MCA; IMP , 81-23-103 , MCA; NEW , 2000 MAR p. 3413, Eff. 12/8/00. |

32.24.525 PROCEDURES, PURCHASE PRICE, AND TERMS

(1) The Milk Control Bureau shall have full authority to direct the transfer of surplus milk as necessary to implement ARM [32.24.524](#). Any pool handler shall be deemed in compliance with the requirements of ARM [32.24.524](#) if it calls for surplus milk or makes surplus milk available in the following manner:

(a) On Wednesday of the preceding week, a pool handler in need of milk may telephone or fax its milk needs for the coming week to a pool handler reasonably believed to have surplus milk and that pool handler shall fax its confirmation or rejection of the order back by Friday of that same week.

(b) Unless otherwise agreed, delivery to the purchasing pool handler shall be the responsibility of the selling pool handler.

(c) The Milk Control Bureau shall have the authority to issue alternative or additional procedures as necessary to implement this provision.

(2) The purchase price at which a pool handler must make surplus milk available and at which a pool handler must purchase surplus milk shall be as follows:

(a) The price per hundredweight of the raw Montana milk shall be based on the usage by class of the purchasing pool handler for such milk. The listed prices for butterfat and skim by class for the month in which such surplus milk is shipped will be used to calculate its value.

(b) Since the usage is not known until the next month after the applicable sale(s) has taken place, the most recent month's quota price will be used. Once the Milk Control Bureau has calculated usage and pricing for the month in which the sale(s) took place, the bureau will adjust the raw milk pricing to reflect the proper price. This information will be provided to the selling and purchasing pool handlers, and it will be their responsibility to make the appropriate invoice and payment adjustments.

(c) No premiums, hauling, or handling fees will be charged to the purchasing pool handler.

(3) Pool handlers will use the following method and manner of payment between them for surplus milk purchases:

(a) A pool handler who purchases surplus milk agrees to pay in cash the purchase price for all milk delivered on a weekly basis. All milk purchased each weekly period shall be paid for in full on the Friday of the following week by depositing payment in the United States mail.

(b) The selling handler will fax invoices of the surplus milk sales to the purchasing handler and the Milk Control Bureau. These invoices will include:

(i) weights and butterfat tests; those weights and butterfat tests will be deemed accurate unless contested by the purchaser; and

(ii) butterfat and skim prices based on the most recently available quota price for each component.

(c) The purchasing handler will then mail payment directly to the seller, with a copy of payment faxed to the Milk Control Bureau.

(d) In turn, the Milk Control Bureau will compile the invoices and record of payments, monitoring them for accuracy. In the event of an error, the bureau will immediately fax this information to both purchasing and selling handlers. At the end of the month, once usage and actual pricing are known, the bureau will fax a statement to both the selling and purchasing handlers, reflecting the calculations outlined in (2) (b) .

(e) Per ARM [32.24.516](#)(1) , any freight costs incurred by the selling pool handler in shipment of this surplus milk may be deducted from that handler's pool account. It is the responsibility of the selling pool handler to provide this information to the Milk Control Bureau no later than the eighth business day of the month following shipment of such milk.

(4) All surplus milk purchased and sold hereunder must, at the time of delivery, meet all applicable local, state, and federal laws and regulations and any tendered surplus milk which does not meet such standards may be rejected.

(5) The weight and butterfat tests shall be determined on the basis of producer ticket weights and tests. If the purchasing pool handler contests the reported weights it shall notify the Milk Control Bureau, which shall reconcile any discrepancies.

(6) No pool handler shall be obligated to make surplus milk available to any other pool handler who is then in default on payment for any previous purchases of surplus milk. Any pool handler who makes surplus milk available and who has not been paid for that milk because of default in payment by the purchasing pool handler shall retain a direct right of action against the defaulting pool handler for the monies owed together with interest at the rate of 1.5% per month plus attorney's fees and costs.

History: [81-23-104](#), MCA; [IMP](#) , [81-23-103](#), MCA; [NEW](#) , 2000 MAR p. 3413, Eff. 12/8/00; [AMD](#) , 2005 MAR p. 2680, Eff. 12/23/05.

Effective rule versions existed in ARM on or after March 31, 2007

| MAR | Effective | Effective | History Notes |
|-----|-----------|-----------|---------------|
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| Notices | From | To | |
|---------|------------|---------|--|
| | 12/23/2005 | Current | History: <u>81-23-104</u> , MCA; <u>IMP</u> , <u>81-23-103</u> , MCA; <u>NEW</u> , 2000 MAR p. 3413, Eff. 12/8/00; <u>AMD</u> , 2005 MAR p. 2680, Eff. 12/23/05. |

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